

124. AT&T Corp. is an "operator" because it contracted with BioImpact for environmental monitoring services, and on information and belief, at all times relevant to this claim, AT&T Corp. was responsible for making decisions and implementing actions to prevent and abate environmental damages caused by releases of hazardous substances during the drilling operations.

125. A&L and Alex Lowe are "operators" within the meaning of 42 U.S.C. §9607 because at the time hazardous substances were disposed, A&L operated the drilling operations, under contract to AT&TSSI. In short, A&L and Alex Lowe "operated" the bore holes and drilling activities creating them. During the period when A&L and Alex Lowe created the bore holes, they spilled drilling mud into the environment containing, on information and belief, hazardous substances. The bore holes are also a part of the facility from which, on information and belief, there has been a release or threatened release of hazardous substances.

126. BioImpact is an "operator" because during the period that hazardous substances were disposed of, BioImpact had the authority and responsibility to stop and to report the drilling operations that led to the drilling mud spills and the disposal of hazardous substances into the environment.

127. AT&TSSI is an "operator" of the site within the meaning of 42 U.S.C. §9607. AT&TSSI contracted with A&L for A&L to provide, *inter alia*, directional drilling, beach manhole construction, and the tying of the land conduit system with the drill pipes at the AT&T fiber optic cable laying project on St. Croix. AT&TSSI had the authority to control the activities of A&L in that it could have, among other things, issued a stop work order to A&L as a result of discharges of drilling mud into the environment.

128. AT&T Global is an "operator" of the site. AT&T Global was the project designer for the AT&T Cable Landing Facility and had the ability to specify and control drilling activities.

129. Plaintiffs have "responded", and are still "responding", to the release and/or threatened release of hazardous substances originating from the Defendants' Hazardous Waste Site. As a consequence, Plaintiffs have incurred significant response costs associated with pre-cleanup removal activities, including sampling costs and other investigative procedures. The Plaintiffs have also incurred other costs associated with removal and/or remedial actions which include, but are not limited to, remedial planning costs and enforcement costs.

130. Plaintiffs' response costs have been incurred, for among other purposes, to identify the existence and extent of the pollution, plan direct response actions, and ensure compliance with both the Act and the National Contingency Plan ("NCP") as set out at 40 CFR Part 300.

131. DPNR Commissioner, Beulah Dalmida-Smith, is the properly designated Trustee for Natural Resources of the Territory of the United States Virgin Islands pursuant to CERCLA. As Trustee for Natural Resources, she brings this claim pursuant to 42 U.S.C. §9607.

132. The releases and threatened releases of hazardous substances that occurred in connection with the drilling mud spills have resulted in damages to natural resources under Commissioner's Smith trusteeship.

133. Among other things, the drilling mud has killed conch, a commercially marketed natural resource and food supply, as well as sea grasses and other organisms. The mud spill continues to present a threat to the environment.

134. Pursuant to 42 U.S.C. §9607, Defendants are jointly and severally liable for all costs of response not inconsistent with the NCP incurred by Plaintiffs.

Moreover, pursuant to 42 U.S.C. §9607(a), Plaintiffs are entitled to receive interest on past costs from the date of demand.

135. Pursuant to 42 U.S.C. §9607, Defendants, and each of them, are liable for damages for injury to, destruction of, or loss of natural resources, reasonable costs of assessing such injury, destruction, or loss, and lost use for the period that it takes to restore, replace, or acquire the equivalent of the resources injured, lost, or destroyed.

136. Plaintiffs have incurred past costs in the amount of \$550,126.99 and, through notice provided by this Complaint, demand payment for this sum immediately. In addition, Plaintiffs demand payment of all future response costs with interest calculated pursuant to the methodology set forth in 42 U.S.C. §9607(a).

137. Plaintiffs demand payment with interest calculated according to 42 U.S.C. §9607(a).

COUNT II - RCRA INJUNCTIVE RELIEF

138. Plaintiffs incorporate by reference paragraphs 1 through 137 of this Complaint.

139. This Count is brought pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6972(a)(1)(b), for injunctive relief to eliminate an imminent and substantial endangerment to health or the environment.

140. The United States Virgin Islands and Beulah Dalmida-Smith are "persons" within the meaning of 42 U.S.C. §6972(a)(1) who may bring a civil action pursuant to 42 U.S.C. §6972(a).

141. Defendants are "persons" within the meaning of 42 U.S.C. §6972(a)(1)(A) who may be sued pursuant to that section.

142. Defendants are generators of or have contributed to the generation of hazardous waste.

143. Defendants have disposed of or have contributed to the disposal of hazardous waste.

144. On numerous occasions during drilling operations at the AT&T Cable Landing Facility, drilling mud was generated and disposed of onto the submerged land and into the Territorial sea immediately offshore of the AT&TVI Cable Landing Facility on Plot #4-A Estate Northside, St. Croix.

145. The drilling mud is a "solid" waste within the meanings of 42 U.S.C. §6903(27) and 42 U.S.C. §6972(a).

146. The drilling mud contains bentonite. Bentonite is toxic to organisms, such as coral, living in sensitive tropical marine environments like that found at the AT&T cable facility. Moreover, conch were and are entrapped in bentonite on the seafloor at the AT&T Cable Landing Facility and they have died, and will continue to die, as the spills have not been remediated.

147. Sampling results of drilling mud taken from piles of drilling mud on the seafloor show that the drilling mud also contains benzo[a]pyrene in concentrations exceeding EPA established risk based concentration levels for water, soil and fish as based on carcinogenicity.

148. The chemicals found disposed in the drilling mud at the site are designated as hazardous waste pursuant to 40 CFR §261.33.

149. As a result, the drilling mud is also a "hazardous waste" within the meanings of 42 U.S.C. §6903(5) and 42 U.S.C. §6972.

150. Drilling mud remains on the seafloor at the AT&T Cable Landing Facility unremediated.

151. The continued presence and releases of drilling mud in the marine environment presents an imminent and substantial endangerment to health and the environment; numerous conch have already died, and a potential exists for human contact, as well as a continuous contact and detrimental impact to benthic and aquatic communities, including local endangered species.

152. The Defendants, and each of them, are generators of solid waste or are contributors to the generation of solid waste. Each Defendant has, or is, contributing to the past or present or disposal of solid waste which presents an imminent and substantial endangerment to health or the environment.

153. The Defendants, and each of them, are also generators of hazardous waste or are contributors to the generation of hazardous waste. Each Defendant has or is contributing to the past or present or disposal of hazardous waste which presents an imminent and substantial endangerment to health or the environment.

154. Pursuant to 42 U.S.C. §6972 (a)(1)(b), Plaintiffs request an order for injunctive relief to eliminate an imminent and substantial endangerment to health or the environment.

COUNT III - RCRA VIOLATIONS

155. Plaintiffs incorporate by reference paragraphs 1 through 154 of this Complaint.

156. This count is brought under 42 U.S.C. §6972 (a)(1)(A) of the Resource Conservation and Recovery Act ("RCRA") to enforce the standards, requirements, and prohibitions set forth in 42 U.S.C. §§6922 and 6930(a), subchapter III, and the regulations promulgated thereunder.

157. The United States Virgin Islands and Beulah Dalmida-Smith are "persons" within the meaning of 42 U.S.C. §6972(a)(1) who may bring a civil action pursuant to 42 U.S.C. §6972(a).

158. Defendants are persons within the meaning of 42 U.S.C. §6972(a)(1)(B) who may be sued pursuant to that section.

159. Defendants are generators of or have contributed to the generation of hazardous waste.

160. Defendants have disposed or have contributed to the disposal of hazardous waste.

161. During drilling operations at the AT&T Cable Landing Facility, on numerous occasions, drilling mud was generated and spewed onto the submerged land and into the Territorial sea immediately offshore of the AT&TVI Cable Landing Facility. Drilling mud was first disposed and released in April, 1996. These actions constitute "disposal" within the meaning of 42 U.S.C. §6903(3).

162. Sampling results of drilling mud from the seafloor show that the drilling mud also contains benzo[a]pyrene in concentrations exceeding EPA established risk based concentration levels for water, soil and fish based on carcinogenicity.

163. The chemical found disposed in the drilling mud at the site is pre-designated a hazardous waste pursuant to 40 CFR §261.33.

164. As a result, the drilling mud is a "hazardous waste" within the meanings of 42 U.S.C. §6903 (5) and 42 U.S.C. §6972.

165. Drilling mud remains on the seafloor at the AT&T Cable Landing Facility unremediated and is a continuing source of releases.

166. Defendants' disposal of drilling muds onto the submerged lands violates regulatory requirements promulgated pursuant to Subchapter III, Hazardous Waste Management, 42 U.S.C. §§6921 to 6939, because it was neither properly

treated nor disposed of in accordance with requirements under Subchapter III and the regulations promulgated thereunder.

167. More specifically, among other violations, if the Defendants can prove they are small quantity generators, or contributors to small quantity generators, Defendants' disposal of drilling mud violates 40 C.F.R. §261.5, in that the waste was not treated on-site or sent off-site to a facility that is allowed by the regulations for treatment or disposal of hazardous waste.

168. In the alternative, to the extent the Defendants cannot prove they are small quantity generators, or contributors to a small quantity generator, among other violations, Defendants' disposal of drilling mud violates numerous requirements including the following:

- a) Defendants violated the provisions of 40 C.F.R. §262.12, in that they failed to obtain an EPA identification number prior to storing, disposing of, or offering for transportation, the hazardous waste generated at the site.
- b) Defendants violated numerous provisions of 40 C.F.R. Part 264, including those involving reporting, storage, and disposal requirements.
- c) Defendants violated the provisions of 40 C.F.R. Part 270 in that they failed to apply for and obtain a permit for on-site disposal of the drilling mud.

169. Pursuant to 42 U.S.C. §6972(a), civil penalties may be applied for up to Twenty-Five Thousand Dollars (\$25,000) per day of noncompliance for each violation of each requirement under the Act; each day of such violation constituting a separate violation.

COUNT IV - V.I. CWA - ABATEMENT

170. Plaintiffs incorporate by reference paragraphs 1 through 169 of this Complaint.

171. This claim is brought on behalf of Beulah Dalmida-Smith, Commissioner of DPNR. The Commissioner has provided telephone notice to the Regional Administrator of the U.S. Environmental Protection Agency, Region II, that she has found an actual, as well as continuing, threatened endangerment to the health and welfare of the people of the Virgin Islands from discharges of pollutants described in the paragraphs below.

172. Section 188 of the Virgin Islands Water Pollution Control Act ("VIWPCA"), 12 V.I.C. §188(d), *et. seq.*, authorizes the Commissioner of DPNR to bring a civil action in an appropriate court to immediately restrain any person causing or contributing to pollution that presents a water pollution emergency. For purposes of that section, "emergency" is defined as "any time that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons, or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish."

173. Beginning in April 1996, Defendants, and each of them, began discharging, spilling, and dumping drilling mud into the Territorial waters without a Territorial Pollution Discharge Elimination System ("TPDES") permit in the marine waters adjacent to AT&T's Cable Landing Facility.

174. The mud spilled has not been cleaned up by the Defendants and is a source of continuing unlawful releases and discharges of pollution and pollutants into the Territorial marine waters. The mud has caused and continues to cause injury to natural resources adversely affecting the health and welfare of the Territory's citizens. Among other injuries, it has caused the death of marketable shellfish - conch.

175. The drilling mud is toxic to organisms found living in the waters and on the seabed near the AT&T Cable Landing Facility, such as coral, conch, and seagrass. Among other things, marketable conch have become entrapped in the drilling mud and have died. The drilling mud has also killed seagrass and has had adverse effects on coral. The mud presents a continuing threat to the conch and other organisms in the area.

176. The drilling mud is a pollution source or combination of sources that present imminent and substantial endangerment within the meaning of 12 V.I.C §188(d).

177. The drilling mud is pollution within the meaning of 12 V.I.C. §182(a). The drilling mud is also a pollutant within the meaning of 12 V.I.C §182(b).

178. BioImpact, as Environmental Monitor for the drilling operation, and BioImpact's President, Amy Dempsey, had the authority and responsibility to prevent unpermitted discharges of drilling mud.

179. Continuing release and violations have existed since the first day drilling mud was discharged on or about April 15, 1996.

180. The Defendants are liable to abate the imminent and substantial endangerment described in this Count.

COUNTS V - V.I. CWA - PENALTIES

181. Plaintiffs incorporate by reference paragraphs 1 through 180 of this Complaint.

182. This claim is brought on behalf of Beulah Dalmida-Smith, Commissioner of DPNR pursuant to the Virgin Islands Water Pollution Control Act ("VIWPCA"), 12 V.I.C. §181, *et seq.*

183. Pursuant to 12 V.I.C. §185, the discharge of any pollutant by any person into the waters of the Virgin Islands is unlawful without a discharge permit issued under VIWPCA.

184. Beginning in April 1996, Defendants, and each of them, began discharging mud into the Territorial waters adjacent to AT&T's Cable Landing Facility without a Territorial Pollution Discharge Elimination System ("TPDES") permit..

185. The mud spilled has not been cleaned up by the Defendants and is a source of continuing, daily, unlawful discharges of pollution and pollutants into the Territorial marine waters. Continuing discharges of pollution and pollutants have existed since the first day drilling mud was discharged on or about April 15, 1996.

186. The drilling mud is pollution within the meaning of 12 V.I.C. §182(a). The drilling mud is also a pollutant within the meaning of 12 V.I.C §182(b).

187. BioImpact, as Environmental Monitor for the drilling operation, and BioImpact's President, Amy Dempsey, had the authority and responsibility to prevent unpermitted discharges of drilling mud.

188. Pursuant to 12 V.I.C §190(b), the Defendants, and each of them, are liable for up to Ten Thousand Dollars (\$10,000) per day in penalties for each violation.

COUNT VI - V.I. RICO

189. Plaintiffs incorporate by reference paragraphs 1 through 188 of this Complaint.

190. This cause of action is being brought pursuant to the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. §600 *et seq.*, by the Attorney General of the Virgin Islands through duly authorized attorneys employed by the Vir-

gin Islands. The Attorney General is bringing this action in his own right as well as on behalf of the Plaintiffs in this action.

191. The Plaintiffs are aggrieved persons under 14 V.I.C. §607. In addition, Plaintiffs have been both directly and indirectly injured by the unlawful actions described in this cause of action. Plaintiffs, among other injuries, have sustained injury to property and the natural resources of the Virgin Islands.

192. AT&T Corp. and AT&TVI are defendant persons who have engaged in activity prohibited by 14 V.I.C. §605.

193. The facts alleged above, as well as the facts set forth in this cause of action, describe the scheme of Defendants AT&T Corp. and AT&TVI to engage in the affairs of the enterprise through a pattern of criminal activity.

194. AT&T Corp., AT&TVI, AT&TSSI, AT&T Global, A&L, and BioImpact acted as an association-in-fact, which functioned as a continuing unit with an ascertainable structure separate and distinct from the pattern of criminal activity alleged in this cause of action (known hereafter as "Enterprise").

195. AT&T Corp. and AT&TVI participated directly and indirectly in a pattern of criminal activity within the meaning of 14 V.I.C. §§604(e) and 605, involving multiple predicate acts of fraud and false statements in violation of 14 V.I.C. §§843(2) and (3), preparing false evidence in violation of 14 V.I.C. §1503, falsification of records, documents and reports required by law in violation of 14 V.I.C. §1784(1). Some of these predicate acts are detailed below and herein.

196. AT&T Corp. and AT&TVI had both a governmental Permittee affirmative duty to act, and a corporate duty to act, and these Defendants refused to act or investigate the circumstances alleged herein, with knowledge of the consequences of such inaction.

197. AT&T Corp. and AT&TVI knew of the general nature of the enterprise and that it extended beyond their individual role. Further, AT&T Corp. and AT&TVI were associated with the enterprise, and they conducted or participated in, directly or indirectly, the conduct of the affairs of the Enterprise through the acts mentioned herein.

198. In violation of 14 V.I.C. §843(2), AT&TVI and AT&T Corp. knowingly and willfully concealed and covered up, by trick and scheme, material facts surrounding the design and scope of the drilling activities surrounding their cable project. In their CZM permit application and throughout the permit approval process, AT&T Corp. and AT&TVI represented that they would drill eight 5.75-inch OD cable conduits. After issuance of CZM Permit No. CZX-28-94W, however, AT&T Corp. and AT&TVI devised and substituted an alternative drilling plan authorizing A&L to drill more than eight cable conduits, to drill larger conduits, and to drill the conduits closer to the surface than originally represented. These facts were material. Among other things, this design ensured that substantial quantities of drilling mud would be spewed into the environment. AT&TVI and AT&T Corp. had a duty to disclose to Plaintiffs these changes that were memorialized in the Amended Drilling Contract with Defendant A&L. Nonetheless, they knowingly and willfully failed to notify appropriate Government officials of these changes.

199. In violation of 14 V.I.C. §843(2), AT&TVI and AT&T Corp. knowingly and willfully concealed and covered up, by trick and scheme, material facts concerning their cleanup of escaping mud. AT&T Corp. and AT&TVI represented in the EAR that "any and all" escaping mud would be "collected," that "the drilling mud" would be "vacuumed up" after the drilling of each conduit, that areas of mud would be "collected through vacuum suction," and that "[e]very effort"

would be made "to retrieve 100%" of mud introduced into the sea. AT&T Corp. and AT&TVI made similar representations in the Water Quality Plan. The EAR was incorporated into the permit and as such these representations became obligations. Subsequent to receiving their water permit, CZX-28-94W, AT&T Corp. and AT&TVI knowingly and willfully failed to provide for vacuum suction siltation equipment at the drill site and chose not to collect, vacuum, or suction up escaping mud after each of the 14 emergence and 4 back reaming events recorded at the site. AT&TVI and AT&T Corp. had a duty to disclose these changes to the Commissioner. Nonetheless, they knowingly and willfully failed to notify appropriate Government officials of this change.

200. In violation of 14 V.I.C. §843(2), AT&TVI and AT&T Corp. knowingly and willfully concealed and covered up, by trick and scheme, material facts surrounding work stoppage in the event of drilling mud releases. In the EAR, included as permit conditions, AT&TVI and AT&T Corp. represented that "the drill and the mud pump" would be "immediately stopped when the break through is made" to limit spillage into the marine environment. AT&T Corp. and AT&TVI, however, chose to back ream conduits on at least 4 occasions, a process which by design required drilling to occur after break through. AT&TVI and AT&T Corp. had a duty to disclose these changes to the Commissioner. Nonetheless, they knowingly and willfully failed to notify appropriate Government officials of these actions and covered up these individual violations by their failure to report.

201. In violation of 14 V.I.C. §§843(2) and (3) and 14 V.I.C. §1784(1), AT&T Corp. and AT&TVI gave false statements in documents required by law and concealed and covered up material facts and violations of law by trick and scheme. Under the terms of CZM Permit No. CZX-28-94W, they were required to report water quality degradation and drilling mud escapes to DEP immediately. By

choosing not to report all water quality degradation and drilling mud escapes to DEP; by repeatedly reporting "no negative impacts" in monthly monitoring reports between May and September 1996 during the release and discharge of as much as, and potentially more than, a hundred thousand gallons of drilling mud; and by submitting misleading, incomplete, and deceptively vague monthly monitoring reports concerning the nature, extent, and impact of the drilling mud spills, AT&T Corp. and AT&TVI falsified statements required by law.

202. Virtually all monthly monitoring reports submitted to DPNR were materially misleading in that they misrepresented and concealed the full extent of the drilling mud released and discharged, the nature and extent of the environmental injury, and the potential environmental injury caused by the discharges. The monthly monitoring reports were a scheme and device designed to conceal the truth about the violations and environmental injury at the site.

203. In violation of 14 V.I.C. §§843(2) and (3) and 14 V.I.C. §1784(1), AT&T and AT&TVI made misrepresentations and false statements with respect to the extent of the spreading of material. AT&T and AT&TVI represented in the EAR that "the extent of spreading of the material" would be documented at the first emergence and that the extent of settled plumes would be "marked and photographed." AT&T and AT&TVI, however, failed to document, mark, or photograph the extent of all of the more than 15 mud escapes, and when they did document a mud escape in monthly monitoring reports submitted to the government, the information was false, misleading, incomplete, and deceptively vague. AT&TVI and AT&T Corp. covered up violations of law by their false, misleading, incomplete, and vague statements in monthly monitoring reports and by their failure to give proper notice of violations.

204. In violation of 14 V.I.C. §§843(2) and (3), AT&T Corp. and AT&TVI made misrepresentations and false statements with respect to the laying of cable and concealed by trick and scheme material facts:

- a) On April 13, 1997, the Captain of the cable laying vessel stated to Plaintiffs' representatives that complying with a Stop Work Order would at no time during the operations place the vessel in jeopardy. AT&T Corps. and AT&TVI, however, represented to Plaintiffs' representatives on April 14, 1997 that the cable laying vessel could not stop in response to Stop Work Orders.
- b) AT&T Corps. and AT&TVI through its Monitor, represented to Plaintiffs' representative on April 14, 1997 that the placed buoys represented the corridor through which the cable vessel would pass and that the marked area reflected the previously agreed upon corridor. Shortly thereafter, however, Plaintiffs' representative discovered that the buoys were not marking the agreed upon corridor and that cable placement would impact the reef.

205. In violation of 14 V.I.C. §843(2), AT&TVI and AT&T Corp. knowingly and willfully concealed and covered up, by trick and scheme, material facts surrounding implementation and maintenance of sedimentation and erosion controls at the site.

206. In their CZM permit application and throughout the permit approval process, AT&T Corp. and AT&TVI represented that sediment and erosion control measures would be implemented. AT&T Corp. and AT&TVI, however, initiated construction prior to implementation of sediment and erosion controls and, even after notice and instruction to do so by their own architect, continued construction without sediment and erosion controls.

207. According to the First Monthly Monitoring Report prepared for AT&T, dated December 7, 1995, at p. 1: "[E]arth clearing began on the AT&T site the week

of October 23, 1995. During this week vegetation was removed and piled within the lot. At this time the silt screens were not yet in place."

208. According to the Architect's Field Report dated November 10, 1995, attached to the First Monthly Monitoring Report prepared for AT&T, dated December 7, 1995: "The construction area is being cleared, but the Erosion & [sic] Sedimentation Control plan has not been implemented. This must be done immediately before earthwork continues. As a condition of the permit the erosion and sedimentation control shall be in place prior to any earth disturbance."

209. According to the Architect's Field Report dated November 11, 1995, attached to the First Monthly Monitoring Report prepared for AT&T, dated December 7, 1995: "The earth change work continued without any implementation of the erosion & [sic] sedimentation Control Plan. There was no supervisory personnel present on the site at the time of the visit." Further, "[i]t is imperative that the erosion and sedimentation control be implemented prior to additional earth disturbance."

210. Moreover, AT&T Corp. and AT&TVI sought to conceal and cover up material facts concerning their failure to fully implement and maintain sedimentation and erosion controls at the site by rushing to implement controls only upon learning of an on-site government inspection.

211. On information and belief, in violation of 14 V.I.C. §1503 and 14 V.I.C. §§843(2) and (3) and 14 V.I.C. §1784(1), AT&TVI, in response to an administrative request for information, provided false and misleading statements. In connection with a modified Cease and Desist Order action, No. CZX-75-1996, AT&TVI was requested to provide a "[d]escription of 'drilling mud' materials and quantities of all such materials used in the process of creating the cable conduits. Include the trade name for the drilling mud, whether the mud was supplied in powder or liquid

form, that applicable mixing ratio for on-site use, the name, address and contact information for the drilling mud supplier, and a complete chemical analysis of the drilling mud."

212. In a response to this request dated December 12, 1996, signed by Barry Florence, President of AT&TVI, AT&TVI stated that the mud was mixed with salt water and the "full description of the drilling mud" was found in an attached exhibit 1. Exhibit 1 did not describe or identify the PAHs found in samples of the drilling mud, and listed in Paragraph 90 above.

213. On information and belief, the drilling mud contained and was dosed with an unknown substance containing hazardous waste and hazardous substances. Samples taken of the mud on the sea floor confirm the presence of PAHs in the drilling mud.

214. In violation of 14 V.I.C. §1503 and 14 V.I.C. §§843(2) and (3) and 14 V.I.C. §1784(1), AT&TVI also provided false and misleading statements regarding unlawful disposal of drilling mud. In an administrative request for information, DPNR asked AT&TVI to provide: "Quantitative and chronological information regarding the reuse, disposal and/or shipment off site, off island, to the dump or any other use of recovered drilling mud." AT&TVI, in its President's December 12, 1996 response to this administrative request for information, stated: "No specific quantitative or chronological information exists regarding the reuse, disposal and/or shipment off site, off island, to the dump or for any other use of drilling mud. This is because all drilling mud that returned to the surface holes during drilling was recycled through the cleaning plant and reused." These statements were false in that substantial quantities of drilling mud were spewed into the marine environment during the drilling process with large quantities being released during reaming. Moreover, at the time this response was made, AT&TVI was

fully aware of thousands of gallons of drilling mud lying on the seafloor that was continuing to release sediments and pollutants in the water column.

215. In violation of 14 V.I.C. §1503 and 14 V.I.C. §§843(2) and (3) and 14 V.I.C. §1784(1), AT&TVI also provided false and misleading statements regarding the date they first knew of the unlawful disposal of drilling mud. DPNR asked AT&TVI in their administrative information request to "[i]ndicate how and when AT&T became aware of the existing major spill of drilling mud reported to DPNR in the October 30, 1996 memo from the environmental monitor. Also, describe the cause of the spill event and the corrective action implemented to address the situation when first notified of the spillage of drilling mud." AT&TVI, in their response by President Barry Florence in his letter of December 12, 1996, states: "AT&T's first notification of the major spill was on Saturday, September 28, 1996." This is a false statement in that AT&TVI was well aware of major drilling mud spills throughout the drilling process. They were kept apprised of the progress of the work and the fact that major mud spills were occurring during back reaming by their monitor, A&L, and the divers on site. They were aware of major spills as early as May, 1996. Additional spills, of which they were aware, occurred in June and other months.

216. AT&T and AT&TVI's repeated violations of the Virgin Islands' statutes that are "predicate acts" extended over a period that spanned from at least April 1996 until the present and involve distinct and independent criminal acts. They were neither isolated nor sporadic events, but involved the regular and repeated violation of law to accomplish their desired ends in the course of the continuing business of the association-in-fact enterprise.

217. These aforementioned acts constitute a regular way of conducting and/or participating in the conduct of the association-in-fact enterprise and, fur-

thermore, pose a threat of continuing future activity through the present time. These acts will continue to be committed by AT&T and AT&TVI and injure DPNR, the Government of the Virgin Islands, and thousands of residents of the United States Virgin Islands.

218. These aforementioned acts are related to each other by virtue of common participants, common victims, and the common purpose of achieving their goals through unlawful means.

219. Pursuant to 14 V.I.C. §607, Defendants AT&T Corp. and AT&TVI are liable for treble damages, attorney fees, and costs.

COUNT VII - V.I. RICO

220. Plaintiffs incorporate by reference paragraphs 1 through 219 of this Complaint.

221. The Plaintiffs have been injured by two acts predicate to the conspiracy (*i.e.*, acts that further the conspiracy) in violation of 14 V.I.C. §605(d).

222. AT&T Corp. and AT&TVI "knowingly agreed" to participate in the enterprise through a pattern of criminal activity. This agreement went to both the commission of the predicate criminal acts and knowledge that the acts were part of a pattern of criminal activity.

223. From at least April, 1996 and continuing through the present date, AT&T Corp. and AT&TVI knowingly agreed and conspired with each other to commit or assist in the commission of at least two of the foregoing predicate acts, with knowledge and intent that such acts were in furtherance of the pattern of criminal activity.

224. In furtherance of the conspiracy and to effect the objects thereof, AT&T and AT&TVI intended to commit, committed, and caused to be committed, a se-

ries of overt acts including, but not limited to, all actions described in the paragraphs recited above.

225. Pursuant to 14 V.I.C. §607, Defendants AT&T Corp. and AT&TVI are liable for treble damages, attorney fees, and costs.

COUNT VIII - FEDERAL RICO

226. Plaintiffs incorporate by reference paragraphs 1 through 225 of this Complaint.

227. The Plaintiffs are persons as defined by Section 1961 of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961.

228. AT&T Corp. and AT&TVI are defendant persons as defined by 18 U.S.C. §1961 of the Act.

229. The unlawful acts of the Defendants in violation of 18 U.S.C. §1962(c) have caused injury to the Plaintiffs which includes, but is not limited to, damage to property interests and damage to the natural resources of the Virgin Islands. Moreover, the acts of the Defendants have caused injury to natural resources held in trust for the people of the Virgin Islands.

230. In addition to the facts incorporated above, the facts set forth herein further constitute and describe the scheme of Defendants AT&T Corp. and AT&TVI to deprive Plaintiffs of their intangible right to regulate, by obtaining permits, and commencing the operation of the AT&TVI shoreside fiber optic facility through fraudulent means.

231. AT&TVI and AT&T Corp. intended to design, construct, and operate the Cable Laying Facility, including the laying and use of fiber optic cable. AT&TVI and AT&T Corp., by their actions, demonstrated their intent to achieve their objectives in violation of legal requirements and through fraudulent means. As

noted in the paragraphs above, AT&TVI and AT&T Corp. engaged in a series of misrepresentations and false statements to Government officials, actions demonstrating wanton disregard of the law and legal authority, and a pattern of covering up their violations.

232. In furtherance of this scheme to defraud, AT&TVI and AT&T Corp. committed two or more predicate acts of mail and wire fraud.

233. AT&T Corp., AT&TVI, AT&TSSI, AT&T Global, A&L, and BioImpact acted as an association-in-fact, which functioned as a continuing unit with an ascertainable structure separate and distinct from the pattern of racketeering activity alleged herein (known hereafter as "Enterprise").

234. The aforementioned Enterprise engaged in, and its activities affected, interstate commerce.

235. AT&T Corp. and AT&TVI directly and indirectly participated in a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5), involving multiple predicate acts of mail and wire fraud (18 U.S.C. §1341 and 18 U.S.C. §1343). AT&T Corp. and AT&TVI also aided and abetted these predicate acts. These predicate acts are detailed below and herein.

236. AT&T Corp. and AT&TVI made materially misleading and false statements and used the mail to send and/or receive documents for executing their scheme to defraud the Plaintiffs and/or in furtherance of the scheme. AT&T Corp. and AT&TVI also used wire transmissions to execute their scheme to defraud the Plaintiffs and/or in furtherance of the scheme. AT&TVI and AT&T Corp.'s use of the United States mail and wire extends over a long period of time, beginning in 1994 and continuing through to the present. AT&T Corp. and AT&TVI's repeated violations from 1994 through the present involve distinct and independent criminal acts. They were neither isolated nor sporadic events, but

involved the regular and repeated violation of law to accomplish their desired ends in the course of the continuing business of the association-in-fact enterprise.

237. Examples of the use of the United States mail and use of the wire in furtherance of AT&T Corp. and AT&TVI's scheme are as follows:

- a) On information and belief, during 1994 and 1995, AT&TVI and AT&T Corp. used the United States mail to exchange information and to provide information to permitting authorities concerning AT&TVI's CZM and Corps of Engineers' permit applications.
- b) On information and belief, AT&TVI and AT&T Corp. used the United States mails to exchange with A&L information and draft provisions for the Drilling Contract and Amended Drilling Contract. On information and belief, provisions and information regarding the Amended Drilling Contract were exchanged using the United States mail in the latter part of April and the early days of May, 1996.
- c) On October 30, 1996, the monitor for AT&TVI and AT&T Corp., BioImpact sent a fax to Jim Casey, EPA/DPNR. The FAX is entitled "NOTICE" and contains materially misleading information in that the FAX suggests that "a large increase of mud on the bottom" occurred as a result of removal of a vent pipe. It also suggests that Ms. Dempsey only recently became aware of the large quantities of mud that at the time of the NOTICE was causing death and injury to conch. In fact, 1) AT&TVI and AT&T Corp. were aware of large quantities of mud being spilled long before the NOTICE was sent to Mr. Casey; and 2) the removal of the vent pipe was not the cause of a significant increase in mud.
- d) On April 14, 1997 AT&T Corp. and AT&TVI representatives (Mr. Beckner, Mr. Frances, Dr. Vicente) made a series of misrepresentations and false statements by radio communication transmissions to Plaintiffs' representatives during AT&T's cable laying activities. These statements furthered AT&TVI and AT&T Corp.'s scheme to defraud the Plaintiffs.
- e) On April 14, 1997, the VI Monitor spoke to the AT&T Corp. and AT&TVI Monitor by radio requesting the Monitor to

verify with the Captain of the AT&T Cable Laying Vessel that no cable laying activities would proceed without proper authorization. After a time, the AT&T Monitor called the VI Monitor and said that he had confirmation from the AT&T Cable Laying Vessel Captain that no cable laying would occur without authorization. Approximately five to 10 minutes later, the VI Monitor observed the AT&T Cable Laying Vessel begin cable laying without authorization and without verification of the correct cable laying corridor.

- f) AT&T Corp. and AT&TVI representatives, Mr. Frances and Mr. Beckner, used the radio Channel Frequency 67 during key points in the day on April 14, 1997 during the cable laying operation. AT&TVI and AT&T Corp. intentionally disregarded the Stop Work Order issued by the on-site DPNR Environmental Monitor to prevent cable laying damage outside the corridor and to prevent unauthorized impacts exceeding the one meter limit on either side of the cable. The DPNR representative contacted the AT&TVI Shoremaster on Channel 67, the VHF radio channel that AT&TVI stated they were using, and advised him of the Stop Work Order. The AT&TVI Shoremaster replied that Channel 67 was AT&TVI's working frequency, that they were in the middle of an operation, that he was too "busy" to talk, and that the DPNR representative should try contacting the cable laying vessel on Channel 16. The DPNR representative next contacted the cable laying vessel on Channel 16 and advised an unidentified AT&TVI agent of the Stop Work Order. Based on the sound of the voice, the DPNR representative concluded that he was speaking to Bill Francis, the AT&TVI representative. The speaker insisted, however, that the AT&TVI representative was "busy" with the Captain and that the cable laying vessel could not stop. The AT&TVI agent told the DPNR representative that he should come pick up Mr. Francis. The DPNR representative responded that he could not leave his station. The AT&TVI agent then stated that Mr. Francis was on his way with a new course plot map. Throughout this entire time period, AT&TVI proceeded laying cable outside the corridor in violation of the repeated Stop Work Orders.
- g) By letter dated April 24, 1997 sent by fax, and on information and belief by letter sent in United States mail, to Ernest Batenga, Assistant Attorney General for the Government of

the Virgin Islands, AT&TVI Attorney Feuerzeig stated that it was AT&T's position that "in the laying of the fiber optic cable, no damage whatsoever was done to any coral reef." Investigations of the cable laying area demonstrated that AT&TVI's unauthorized cable laying outside the northern corridor damaged the reef and reef organisms along a minimum of 60 meters, including various soft corals (e.g. "a particular gorgonian") and at least one scleractinean coral. Moreover, prior to AT&T's letter, AT&T's Monitor at the Cable Laying Site had documented injury to the reef in that corals on the reef had been damaged.

238. AT&T Corp. and AT&TVI participated, both directly and indirectly, through *respondeat superior* and aiding and abetting in the commission of the aforementioned acts of mail and wire fraud.

239. AT&T Corp. and AT&TVI knew of the commission of the acts of mail and wire fraud and acted with intent to facilitate them.

240. AT&T Corp. and AT&TVI had both a governmental permittee affirmative duty to act, and a corporate duty to act, and these Defendants refused to act or investigate the circumstances alleged herein, with knowledge of the consequences of such inaction.

241. AT&T Corp. and AT&TVI knew of the general nature of the enterprise and that it extended beyond their individual role. Further, AT&T Corp. and AT&TVI were associated with the Enterprise, and they conducted or participated in, directly or indirectly, the conduct of the affairs of the Enterprise through the acts mentioned herein.

242. These aforementioned acts constitute a regular way of conducting and/or participating in the conduct of the association-in-fact Enterprise and, furthermore, pose a threat of continuing future activity through the present time. These acts will continue to be committed by AT&T and AT&TVI and injure

DPNR, the Government of the Virgin Islands, and thousands of residents of the United States Virgin Islands.

243. These aforementioned acts are related to each other by virtue of common participants, common victims, and the common purpose of achieving their goals through unlawful means of mail and wire fraud injuring the Plaintiffs and thousands of residents of the Virgin Islands.

244. Pursuant to 18 U.S.C. §1962(c), Defendants AT&T Corp. and AT&TVI are liable for treble damages, plus interest, costs and attorneys fees.

COUNT IX - FEDERAL RICO

245. Plaintiffs incorporate by reference paragraphs 1 through 244 of this Complaint.

246. The Plaintiffs have been injured by two acts predicate to the conspiracy (*i.e.*, acts that further the conspiracy) and the aforementioned racketeering predicate acts in violation of 18 U.S.C. §1962(d).

247. AT&T Corp. and AT&TVI "knowingly agreed" to participate in the Enterprise through a pattern of racketeering activity. This agreement went to both the commission of the predicate racketeering acts and knowledge that the acts were part of a pattern of racketeering activity.

248. From 1994 and continuing through the present date, AT&T Corp. and AT&TVI knowingly agreed and conspired with each other to commit or assist in the commission of at least two of the foregoing predicate acts, with knowledge and intent that such acts were in furtherance of the pattern of racketeering activity.

249. In furtherance of the conspiracy and to effect the objects thereof, AT&T Corp. and AT&TVI intended to commit, committed, and caused to be committed,